

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 58 OF 2005

MR.ELDRED MASCARENHAS JR. REP.BY Appellant
HIS FATHER & NATURAL GUARDIAN

Versus

MR.CHURCHILL ALEMAO AND 3 ORS., ...Respondents

Mrs.A.Agni,Advocate for the appellant.

Mr.Sudesh Usgaonkar, Advocate For Respondent Nos.1, 2 and 3.

Coram:- R.M.S. KHANDEPARKAR, J.

Date:- 19th January, 2006

P.C.

1. Heard the learned advocate for the appellant. Undisputedly, the appellenat had filed the suit for permanent injunction simplicitor on the basis of the Sale Deed stated to have been executed by the erstwhile owners on 15th April, 1988. However, in the course of recording of the evidence, it was clearly admitted by the plaintiff that the possession of the suit property was handed over to the respondent No.1 in the year 1987 by the erstwhile owners. The Courts below have also found that such handing over of possession was pursuant to the execution of the agreement for sale of the property to the respondent No.1 and also persuant to the part payment of consideration amount. Once it is not in dispute that much prior to the execution of the Sale Deed dated 15th April, 1988 the possesion of the suit property was already handed over by the erstwhile owners to the respondent No.1in terms of agreement for sale of the said property, the appellant could not have filed a suit for injunction simplicitor solely on the basis of the Sale Deed executed much after the delivery of possession of the suit property by the erstwhile owners to the respondent No.1. Being so, the findings arrived at by the Courts below

and dismissal of the suit cannot be found fault with. In the circumstances, no substantial question of law arises for consideration in the matter and hence the Second Appeal is summarily dismissed.

R.M.S. KHANDEPARKAR, J.

PS